



*Sackett v. EPA*, 598 U.S. 651 (2023). Because the Court concluded that White was unlikely to succeed on the first preliminary injunction factor, it denied his motion for injunctive relief without considering the remaining three factors as it was entitled.

White thinks the Court got it wrong and that the Amended rule is still unlawful under the APA. On 8 July 2024, he noticed an interlocutory appeal of the Court's order denying injunctive relief. [DE 43]. On 12 July 2024, he filed the instant motion asking the Court to preliminarily enjoin the Federal Defendants (EPA and the Army Corps) from giving effect to, implementing, or enforcing as to him and his properties, the "adjacent wetlands" provision of the Amended Rule while his interlocutory appeal is pending. [DE 48].


**Discussion.** A district court may grant an injunction pending the appeal of its interlocutory order refusing to grant that injunction. Fed. R. Civ. P. 62(d). The standard for an injunction pending appeal is the same as the standard for a preliminary injunction. *Mahmoud v. McKnight*, 688 F. Supp. 3d 265, 306 (D. Md. 2023), *aff'd*, 102 F.4th 191 (4th Cir. 2024); *see also Respect Maine PAC v. McKee*, 622 F.3d 13, 15 (1st Cir. 2010); *Nken v. Holder*, 556 U.S. 418, 434 (2009). So White must show (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of the equities favors him, and (4) that an injunction is in the public interest. *See Winter v. Nat'l Res. Def. Council*, 555 U.S. 7, 20 (2008). A failure on any of these factors is enough to deny the motion without fully evaluating the rest. *See, e.g., Vitkus v. Blinken*, 79 F.4th 352, 361 (4th Cir. 2024)

As with White's first motion for preliminary injunction, the instant motion does not make it past the first factor. The order denying preliminary injunctive relief discusses at considerable length why White is unlikely to succeed on the merits. [DE 41]. Nothing has changed on that front, so the Court incorporates and adopts its earlier reasoning by reference. [DE 41 at 15–24]. It follows

that White is unlikely to succeed on the merits here. Accordingly, the Court denies his request for preliminary injunctive relief pending appeal without addressing the remaining factors. *See Vitkus*, 79 F.4th at 361.

**Conclusion.** For these reasons, White's Motion for Injunction Pending Appeal [DE 48] is DENIED.

SO ORDERED, this 14 day of August 2024.

  
TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE